

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Timothy M. O'Mara,
Plaintiff

v.

Civil No. 08-cv-51-SM
Opinion No. 2009 DNH 147

David Dionne; Carl Brown;
Jeremy Menec; Tony Sawyer;
William McDougall; Willie Scurry;
William Raymond; James O'Mara,
individually, and as Superintendent
of the Hillsborough County
Department of Corrections; and
Hillsborough County Department
of Corrections,
Defendants

O R D E R

Pro se plaintiff Timothy O'Mara challenges the conditions of his confinement as a pre-trial detainee in the Hillsborough County House of Corrections. 42 U.S.C. § 1983. His case consists of: (1) a Fourteenth Amendment claim alleging inhumane cell conditions; (2) a Fourteenth Amendment claim challenging the process by which he was placed in administrative segregation; (3) a Fourteenth Amendment claim alleging denial of out-of-cell and recreation time; and (4) related municipal-liability claims against the Hillsborough County Department of Corrections under the doctrine established in Monell v. Department of Social Services, 436 U.S. 658 (1978). Before the court is defendants'

renewed motion for summary judgment.¹ Plaintiff has filed no objection. For the reasons given, defendants' renewed summary judgment motion is granted in part and denied in part.

Summary Judgment Standard

A summary judgment motion should be granted when the record reveals "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED. R. Civ. P. 56(c). "The object of summary judgment is to 'pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required.' " Dávila v. Corporación de P.R. para la Diffusión Pública, 498 F.3d 9, 12 (1st Cir. 2007) (quoting Acosta v. Ames Dep't Stores, Inc., 386 F.3d 5, 7 (1st Cir. 2004)). "[T]he court's task is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Noonan v. Staples, Inc., 556 F.3d 20, 25 (1st Cir. 2009) (citations and internal quotation marks omitted). When ruling on a party's motion for summary judgment, a trial court "constru[es] the record in the light most favorable to the nonmovant and resolv[es] all reasonable inferences in [that] party's favor." Meuser v. Fed. Express Corp., 564 F.3d 507, 515 (1st Cir. 2009)

¹ Unless otherwise noted, references to defendants' motion for summary judgment are to the renewed motion (document no. 54) and the memorandum of law in support thereof (document no. 54-2).

(citing Rochester Ford Sales, Inc. v. Ford Motor Co., 287 F.3d 32, 38 (1st Cir. 2002)).

Background

Timothy O'Mara was incarcerated in the Hillsborough County House of Corrections ("jail"), as a pre-trial detainee, on two occasions relevant to this matter: from January 17, 2007, through February 13, 2007, and from June 15, 2007, through October 27, 2008.

During O'Mara's incarceration, the Hillsborough County Department of Corrections ("department") had a formal grievance procedure that provided as follows:

The following are the steps of the grievance procedure:

- Step 1: Informal Resolution - You must make a genuine attempt to seek an informal resolution of your problem with the staff member concerned.
- Step 2: The second step is initiated using the Inmate Request Form format. Fill out an Inmate Request Form stating your problem and suggested remedy. Submit the form to your Unit Officer. Most request forms will be answered within seven (7) working days of receipt.
- Step 3: If you are dissatisfied with the response to your Inmate Request Form, you may file an Inmate Grievance Form. The Captain or designee has fifteen (15) working days from receipt to review your grievance and

reply unless there are extenuating circumstances.

Decisions made by the county correctional facility's disciplinary hearings officer, or classification officer, cannot be appealed through the grievance procedure.

(Defs.' Mot. Summ. J., Ex. G (Hillsborough Cty. Dep't of Corr. Handbook), at 20.)

Classification decisions have a separate appeal process, which provides as follows:

Your classification status will be reviewed periodically during your incarceration and may change based on new information. You may appeal your classification assignment by submitting a Classification Appeal Form to the Superintendent or his designee. Classification Appeal Forms may be obtained by sending an inmate request form to the Classification Officer. Classification Appeal Forms received more than three business days after being issued will not be considered.

(Id. at 7.)

When O'Mara was booked into the jail he "was initially evaluated by Mr. Robert Bourgeois on June 16, 2007 and placed on level #3, which is 'high-medium' security status . . . [because he] was a suicide risk and . . . his alleged criminal offense involved assaultive behavior." (Dionne Aff. (document no. 54-3) ¶ 6.) On June 21, O'Mara requested that he be placed in

protective custody, stating: "I do not feel safe on this unit. It is known that I am a registered sex offender. Although I have not been threatened by anyone I still don't feel safe." (Defs.' Mot. Summ. J., Ex. A, at 006.) His request was granted.

On February 19, 2008, the department's classification committee held a hearing on O'Mara's classification status. Under the heading "Reason for the Hearing," the committee's Record of Decision says: "Inmate has demonstrated violent and aggressive behavior." (Defs.' Mot. Summ. J., Ex. A, at 004.) The hearing resulted in the following decision: "This committee has determined that inmate O'Mara . . . will be placed in Administrative Segregation for a period of 30 days. On or about 3/19/08, inmate O'Mara will be reviewed for determination of any future classification status change." (Id. at 004.) O'Mara filed a Classification Appeal Form, and his appeal was granted in part and denied in part. (Id. at 003.) On March 19, the classification committee held a second hearing and determined that O'Mara "should be removed from Administrative Segregation," (id. at 001), and ruled that "Inmate O'Mara . . . is to be housed on unit 1-C as a Protective Custody inmate" (id. at 002.)

O'Mara filed the complaint in this case in February of 2008, and amended it in June. His case now consists of four claims.

Claim One is a Fourteenth Amendment claim arising from inhumane cell conditions, based generally upon allegations that defendants O'Mara, Dionne, Brown, and Menec: (a) placed defendant O'Mara in a cell that lacked adequate ventilation and exposed him to "poisonous gases" and noxious fumes; (b) served him inadequate and nutritionally deficient meals; (c) served those meals on trays contaminated with mold and mildew; and (d) placed him at risk of harm by housing him with inmates who had higher security classifications than he did.²

Claim Two is that defendants Raymond, McDougall, Scurry, and Sawyer violated O'Mara's Fourteenth Amendment rights by causing him to be placed in administrative segregation in reprisal for filing a civil action against them, and did so without giving him due process or the right to appeal.

Claim Three is that defendants O'Mara and Dionne violated plaintiff's rights under the Fourteenth Amendment by denying him an adequate amount of out-of-cell and recreation time. Claim Four is for municipal liability under the doctrine established in Monell, 436 U.S. 658.

² O'Mara's additional claims concerning the monotony of his meals and the jail's practice of passing food under his cell door to be consumed in his cell have been dismissed.

Discussion

Defendants advance three arguments: (1) O'Mara has not exhausted his administrative remedies; (2) Dionne's affidavit and the institutional records attached thereto entitle defendants to judgment on the merits on O'Mara's claims concerning cell-conditions, placement in administrative segregation, and lack of out-of-cell time; and (3) judgment in their favor on O'Mara's three substantive claims entitles them to judgment on his Monell claim. The Court proceeds claim by claim.

A. Claim One: Cell Conditions

Defendants first argue that O'Mara has not exhausted the administrative remedies he should have used to seek redress for the allegedly inhumane cell conditions about which he now complains. Regarding exhaustion, the Prison Litigation Reform Act ("PLRA") provides:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a). Moreover, the PLRA requires "proper exhaustion," Woodford v. Ngo, 548 U.S. 81, 93 (2006), defined as "compliance with an agency's deadlines and other critical procedural rules," id. at 90. "[F]ailure to exhaust is an

affirmative defense under the PLRA.” Jones v. Bock, 549 U.S. 199, 216 (2007). A defendant who demonstrates lack of exhaustion is entitled to dismissal of the unexhausted claims in the plaintiff’s complaint. See Medina-Claudio v. Rodriguez-Mateo, 292 F.3d 31, 36 (1st Cir. 2002).

In support of their motion for summary judgment, defendants have produced all the Inmate Request Forms and all the Inmate Grievance forms O’Mara submitted during his incarceration. Given the three-step grievance procedure in place during O’Mara’s incarceration, it is necessary for a particular claim to have reached the Inmate Grievance Form stage for it to qualify as fully exhausted. Two of the four grounds for O’Mara’s cell-conditions claim plainly do not cross that threshold. There is no record that he filed either an Inmate Request Form or an Inmate Grievance Form concerning the ventilation of his cell. Regarding his claim that he was placed at risk of harm by being housed with inmates with higher security classifications while in protective custody, the record includes neither an Inmate Request Form nor an Inmate Grievance Form addressing that issue.³

³ The only mention O’Mara made of his concerns about his fellow inmates, subsequent to his initial request to be placed in protective custody, appears in a March 30, 2008, Inmate Request Form in which he wrote: “I wish to inform the Classification Officer that I have no issues of conflict with any PC [protective custody] inmates in this jail. I wish to be informed of any PC inmate who claims to be an enemy to me or considers me to be an

Accordingly, the undisputed factual record demonstrates that O'Mara did not exhaust his administrative remedies for those complaints.

Turning to the remaining grounds for Claim One, defendants acknowledge that O'Mara did grieve the alleged contamination of food trays (Defs.' Memo. of Law, at 5), and the record submitted by the defendants demonstrates full exhaustion (see Defs.' Mot. Summ. J., Ex. I, at 5, 33-34). That leaves the portion of Claim One described by the magistrate judge as follows:

O'Mara further alleges that on a daily basis, defendants served him "sack lunches" that were nutritionally deficient and inadequate in servings, all of which caused him to suffer a weight loss of more than twenty pounds in one month. Defendants allegedly served him sack lunches on a daily basis from June 2007 to the present.

(Report & Recommendation (document no. 10), at 12 (footnote omitted).) Defendants argue that "O'Mara complains [in this suit] about the quantity and nutritional quality of the meals provided to him while in custody at HCDOC; however, in his grievances, he complains about the manner in which the meals were served, the alleged lack of variety in the brown bag lunches, and

enemy." (Defs.' Mot. Summ. J., Ex. H. at 0053.) The Classification Supervisor, W. Raymond, responded: "Request denied." (Id.) O'Mara did not follow up by filing an Inmate Grievance Form.

the temperature of some items.” (Defs.’ Memo. of Law, at 6.) In defendants’ view, the food-related issues O’Mara raises in this suit are sufficiently different from those he grieved to make those grievances insufficient to satisfy the exhaustion requirement. Defendants’ point is well taken.

The operative principle regarding exhaustion is that when utilizing a prison grievance procedure, “inmates must provide enough information about the conduct of which they complain to allow prison officials to take appropriate responsive measures.” Beltran v. O’Mara, 405 F. Supp. 2d 140, 151 (D.N.H. 2005) (quoting Johnson v. Testman, 380 F.3d 691, 697 (2d Cir. 2004); citing Johnson v. Johnson, 385 F.3d 503, 517 (5th Cir. 2004); Burton v. Jones, 321 F.3d 569, 575 (6th Cir. 2003); Strong v. David, 297 F.3d 646, 650 (7th Cir. 2002); Brown v. Sikes, 212 F.3d 1205, 1207 (11th Cir. 2000)). That is,

[a]s the Second Circuit reasoned in Testman,

Uncounselled inmates navigating prison administrative procedures without assistance cannot be expected to satisfy a standard more stringent than that of notice pleading [through their grievances]. Still, the PLRA’s exhaustion requirement does require that prison officials be “afford[ed] . . . time and opportunity to address complaints internally.”

380 F.3d at 697 (quoting Porter [v. Nussle], 534 U.S. [516,] 524–25 (2002)).

Beltran, 405 F. Supp. 2d at 151.

On October 27, 2007, O'Mara submitted an Inmate Request Form stating: "Requesting grievance for the excessive use of 'sack lunches.' This diet has proven to be a monotonous diet. Served six days a week then one day the same food only served in a tray." (Defs.' Mot. Summ. J., Ex. I, at 0030.) In the Inmate Grievance Form he filed the next day, O'Mara stated:

I am grieving the excessive use of "sack lunches" six days a week. This practice of serving balogna, spicy balogna and balogna disguised as ham is a monotonous diet. No ordinary person would eat this same food every day, day after day, week after week, month after month. Sack lunches sent to unit for lunch then returned to kitchen as leftovers are returned the following day. I know this because I have marked them in the past.

(Defs.' Mot. Summ. J., Ex. I., at 0029).⁴ O'Mara's grievance plainly put jail officials on notice that he was displeased about the lack of variety in the sack lunches he was given, but it gave no indication that he thought he was not getting enough to eat. To the contrary, the grievance indicated that O'Mara was sending uneaten food back to the kitchen. The court concludes that

⁴ Two days later, O'Mara received the following response: "All meals follow a daily balance of nutrition. These meals are provided to the inmate population. Meals are changed and rotated daily and sometimes weekly and monthly. Your grievance is unfounded. No further action required." (Defs.' Mot. Summ. J., Ex. I, at 0029.)

O'Mara did not exhaust his administrative remedies with regard to his claim that the provided sack lunches were nutritionally deficient.

Based on the forgoing, Claim I is reduced to a Fourteenth Amendment conditions-of-confinement claim based on the use of contaminated food trays. The Magistrate Judge described that claim: "They [defendants] also allegedly served him meals on food trays that were rusted, cracked and filled with contaminated water, mold and mildew. After eating food served on these trays, O'Mara allegedly experienced digestive problems, stomach pain, diarrhea and headaches." (Report & Recommendation, at 12.) Defendants argue that they are entitled to judgment as a matter of law on the merits of O'Mara's cell-conditions claim, but have not specifically addressed the food tray issue.⁵ Rather, they simply argue that "nothing in Mr. O'Mara's medical chart corroborates adverse health effects from allegedly uncivilized housing conditions" (Defs.' Memo. of Law, at 10-11), and that "[u]nder the controlling standards, such conditions are, as a matter of law, insufficient to allow the current 'conditions' claims to proceed to a federal jury and should be resolved by

⁵ Dionne mentions food trays in his affidavit, but only says that O'Mara "grieved the food trays used to serve his meals." (Dionne Aff. ¶ 28.) That is, Dionne's affidavit contains no evidence related to whether a genuine material factual dispute exists.

brevis disposition for the defendants" (id. at 11 (footnote omitted)).

Under the controlling standards, prison officials "must provide humane conditions of confinement; [and] must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must 'take reasonable measures to guarantee the safety of the inmates.'" " Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 526-27 (1984)). That constitutional requirement is violated when two conditions are met: (1) "the deprivation alleged [is], objectively 'sufficiently serious,'" " Farmer, 511 U.S. at 834 (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)), i.e., it "result[s] in the denial of 'the minimal civilized measure of life's necessities,'" " Farmer, 511 U.S. at 834 (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)); and (2) the accused prison official has "a sufficiently culpable state of mind," Farmer, 511 U.S. at 834 (citation and internal quotation marks omitted), amounting to "deliberate indifference to inmate health or safety," id. (citation and internal quotation marks omitted).

O'Mara first objected to the jail's allegedly contaminated food trays in an Inmate Request Form dated October 20, 2007. He filed an Inmate Grievance Form the next day, in which he wrote:

I am grieving the use of the old tan food trays. These trays are contaminated from the inside out with mold and mildew. These trays are cracked and leak contaminated water into food that is served for inmates. The contaminated trays are noticeably heavier than the good trays.

As a former inmate worker in the kitchen I brought this problem to the cook[']s attention in 2006.

(Defs.' Mot. Summ. J., Ex. I, at 0033.) He received the following response: "Trays are taken out of service daily. This will continue as serve inmates meals. Thank you for the information. No further action required." (Id.) O'Mara next raised the issue of contaminated food trays in an Inmate Grievance Form dated March 21, 2008. That form was ostensibly prompted by cold pasta on O'Mara's dinner tray on March 17, but also included references to various other food-related issues, including the allegedly contaminated food trays:

I have filed grievances for how my food was handled in the past. I filed [a] grievances for use of contaminated food trays full of water You are still serving food in food trays that weigh six pounds full of contaminated mold, mildew bacteria that leaks into trays stacked under them. WHAT IS YOUR PROBLEM? Don't you know how to serve food to inmates without endangering there health?

(Id. at 005.) The form was treated as grieving only the cold pasta, and was otherwise characterized as "a diatribe of perceived incidents/issues that may or may not have been raised in the past." (Id. at 004.)

As noted, without mentioning O'Mara's allegations concerning contaminated food trays, defendants state that "nothing in Mr. O'Mara's medical chart corroborates adverse health effects from allegedly uncivilized housing conditions." (Defs.' Memo. of Law, at 10-11.) Defendants, however, have produced only a small portion of O'Mara's medical records. The records produced are marked as Exhibit F to their motion for summary judgment. Those records are described in Dionne's affidavit as O'Mara's medical records for the period during which he allegedly had been subjected to poisonous gasses and noxious fumes. (Dionne Aff. ¶ 24.) And, indeed, the eight pages comprising Exhibit F begin with "Medical File 002" and end with "Medical File 0052." In other words, more than forty pages of O'Mara's medical records remain unproduced. Because the complete medical record for the relevant period was not offered in support of the motion, the court cannot conclude that the undisputed factual record demonstrates that O'Mara did not suffer from, or complain about, physical symptoms related to moldy trays. Moreover, the court cannot conclude, as a matter of law, that O'Mara's Fourteenth Amendment rights would not have been violated if he had suffered digestive problems, stomach pain, diarrhea, and headaches as a result of eating meals from contaminated food trays for five months, assuming deliberate indifference to such a condition. Accordingly, defendants are not entitled to summary judgment on

Claim One. All that remains of that claim, however, is O'Mara's assertion that he suffered physical pain and/or illness as a result of being served meals on contaminated food trays. The other grounds underlying Claim One were not properly exhausted.

B. Claim Two: Placement in Administrative Segregation

In support of their first motion for summary judgment, defendants argued that O'Mara failed to exhaust Claim Two. (See Defs.' Memo. of Law (document no. 44-2), at 6.) If they are making the same argument again - their current memorandum of law is not clear on that point - the argument is refuted by their acknowledgment, supported by Dionne's affidavit, that "O'Mara appealed his initial placement on 'ad-seg' " (Defs.' Memo. of Law, at 6 n.7). Accordingly, defendants are not entitled to dismissal of Claim Two on grounds of exhaustion.

Claim Two is a "Fourteenth Amendment due process claim[] arising from O'Mara's confinement in administrative segregation." (Report & Recommendation, at 35.) The Magistrate Judge further described that claim:

The hearing and processes employed by defendants allegedly failed to provide O'Mara with due process prior to being classified to administrative segregation. Afterwards, O'Mara allegedly was denied any right to appeal. He further claims that defendants placed him in administrative segregation in reprisal

for his filing of a civil action against them and, therefore, that their actions were not impartial.

(Id. at 29.) Defendants argue that they are entitled to summary judgment because the undisputed factual record demonstrates that the decision to place O'Mara in administrative segregation was fully justified and that O'Mara received all the process to which he was due.

Pre-trial detainees such as O'Mara "have a liberty interest in avoiding punishment - an interest that derives from the Constitution itself." Surprenant v. Rivas, 424 F.3d 5, 17 (1st Cir. 2005) (citing Sandin v. Conner, 515 U.S. 472, 484 (1995); Bell v. Wolfish, 441 U.S. 520, 535 (1979)). The process to which O'Mara was due included, among other things: (1) written notice of the charges against him, no less than twenty-four hours before his hearing, Wolff v. McDonnell, 418 U.S. 539, 564 (1974); (2) the right to call witnesses and present documentary evidence, id. at 566; and (3) an impartial decisionmaker, id. at 570-71.

While the three elements of due process identified above were expressly described on page 28 of the Magistrate Judge's report and recommendation, they are not addressed in either defendants' memorandum of law or Dionne's affidavit. Both Dionne's affidavit (see ¶ 9), and the Classification Appeal Form

produced by defendants (see Defs.' Mot. Summ. J., Ex. A, at 003), are undisputed evidence that O'Mara did appeal the classification committee's decision, which eliminates denial of appeal rights as a viable ground for Claim Two. But, defendants have produced no evidence that O'Mara received written notice of the February 19, 2008, classification hearing twenty-four hours in advance,⁶ no evidence that he was given the opportunity to call witnesses or introduce documentary evidence at the February 19 hearing,⁷ and no evidence or argument responding to O'Mara's allegation that he was reclassified in retaliation for having filed a civil action against defendants. Accordingly, defendants are not entitled to summary judgment on O'Mara's claim that he was placed in administrative segregation without due process.

⁶ O'Mara's disciplinary record includes no fewer than fourteen notices of disciplinary hearings (see Defs.' Mot. Summ. J., Ex. C, at 0015, 0024, 0045, 0053, 0061, 0072, 0080, 0088, 0096, 00104, 00113, 00125, 00155, 00164), and at least two executed waivers of notice (see id. at 62, 81), while his classification record includes neither a notification or a waiver of notification pertaining to the February 19 classification hearing.

⁷ If anything, the record seems to suggest, or at least hint, that O'Mara was not given the opportunity to call witnesses at the February 19 hearing. The Record of Decision for the subsequent hearing, on March 19, bears the notation: "Witnesses: None called by inmate O'Mara" (Defs.'s Mot. Summ. J., Ex. A, at 001), while the February 19 Record of Decision simply says: "Witnesses: None" (id. at 004).

C. Claim Three: Out-of-Cell and Recreation Time

In the order on defendants' previous motion for summary judgment, the court rejected defendants' argument that O'Mara had not met the exhaustion requirement with respect to his claim that he received inadequate out-of-cell and recreation time. Among other things, the court pointed out the deficiencies of the Dionne affidavit, including its failure to attach the Inmate Grievance Forms it referred to. That deficiency has been corrected in the renewed motion for summary judgment, and defendants are entitled to summary judgment on grounds of O'Mara's failure to exhaust his administrative remedies.

In reliance on the magistrate judge's report and recommendation, the court's previous order described Claim Three in the following way:

O'Mara clarifies that from November 11, 2007 to June 23, 2008, he was denied any opportunity to exercise out of his cell. He further clarifies that he was "locked in a cell 22 hours a day" and was subjected to double-celling for a period of seven months. In addition, he alleges that the denial of adequate out-of-cell and recreation time has adversely affected his mental well being and has caused him to suffer psychological or physical problems, including headaches, muscle soreness, skin infections, dizziness, weight loss and loss of vision and hair. He adds that the deprivations have exacerbated his pre-existing and diagnosed bipolar disorder and suicidal tendencies. Lastly, he broadly alleges that he has been denied medication.

O'Mara's complaints of being denied adequate out-of-cell time and recreation time for a significant

period of time, combined with his allegations of resulting psychological and physical problems, allege deprivations sufficiently extreme to establish a cognizable constitutional claim.

(Order (document no. 53), at 12.) In the October 28, 2007, Inmate Grievance Form in which he complained about inadequate out-of-cell time, O'Mara wrote:

I am grieving the lack of out of cell time provided to myself as a PC [protective custody] inmate on Unit 2A. The two 1 hour durations are never 2 1hr periods. They are divided up into bits and pieces. I do not have enough time to contact my attorney during business hours. 2 hours of out of cell time for PC inmates is less than [the amount of] time provided convicted inmates and I am pretrial with the same amount of time as maximum security.

(Defs.' Mot. Summ. J., Ex. I, at 0023.)⁸ That grievance addressed out-of-cell time as it related to O'Mara's ability to contact his attorney. Nowhere, however, does it even hint that O'Mara was complaining about a lack of exercise resulting from his lack of out-of-cell time, which is the gravamen of Claim Three. Moreover, none of O'Mara's other Inmate Grievance Forms makes any mention of out-of-cell time or exercise, either

⁸ O'Mara received the following response: "Sergeant Riley addressed these issues with you. You can contact your attorney via the U.S. Mail also. The unit officers switch OOCCT so that you can have contact at different times with your attorney. You also have the ability to move off that unit. You should address this with the classification department. No further action required." (Defs.' Mot. Summ. J., Ex. I, at 0023.)

individually or in combination.⁹ Because O'Mara never put jail officials on notice of the issue he raises in Claim Three, i.e., a lack of physical exercise due to a lack of out-of-cell time, the court concludes that O'Mara has not exhausted his administrative remedies for that claim, which entitles defendants to summary judgment on Claim Three.

D. Claim Four: Monell Liability


With Claims One and Two still viable, defendants are not entitled to summary judgment on O'Mara's Monell claim.

Conclusion

For the reasons given, defendants' renewed motion for summary judgment (document no. 54) is granted in part and denied in part. The case now consists of Claim One, reduced to a single ground, i.e., the jail's use of allegedly contaminated food trays, and Claim Two.

⁹ Specifically, O'Mara grieved: (1) use of the "old tan food trays" (Defs.'s Mot. Summ. J., Ex. I, at 0033); (2) having to eat with a spork (id. at 0031); (3) excessive use of sack lunches (id. at 0029); (4) unequal portions on food trays and an inadequate serving of oatmeal (id. at 0026); (5) his treatment at medical call (id. at 0015); (6) having meals passed to him under the door of his cell (id. at 009-10); (7) being fed all his meals in his cell (id. at 007); and (8) being served cold pasta (id. at 004-05). In addition, O'Mara filed one Inmate Request Form about out-of-cell time that did not result in a subsequent Inmate Grievance Form. (Defs.' Mot. Summ. J., Ex. H, at 0030.)

SO ORDERED.



Steven J. McAuliffe
Chief Judge

October 5, 2009

cc: Timothy M. O'Mara, pro se
John A. Curran, Esq.
Elizabeth L. Hurley, Esq.